



APPENDIX A  
MAINE REVISED STATUTES  
ANNOTATED (MRSA)  
TITLE 23

MAINE RIGHT OF WAY MANUAL

*January 2006*



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**TITLE 23, SECTION 61; VACATION, SALE OR LEASE OF ACQUIRED LAND**

1. **Land acquired may be vacated.** The Department of Transportation may vacate any land or part of land or rights in land which have been taken or acquired for transportation purposes by executing and recording a deed, and that action shall vest the title to the lands or rights so vacated in the person in whom it was vested at the time of the taking, their heirs and assigns. The value at the time of vacation may be pleaded in mitigation of damages in any proceeding on account of that taking. [1985, c. 13 (new).]
2. **Land acquired may be sold.** The Governor, on recommendation of the department, may sell and convey on behalf of the State the interests of the State in property taken or acquired by purchase for transportation purposes and deemed no longer necessary for those purposes. [1985, c. 13 (new).]
- 2-A. **Easements may be conveyed.** The Department of Transportation may grant or otherwise transfer easements over property taken or acquired for transportation purposes when the department in its sole discretion determines that the conveyance of such easements is appropriate and necessary. [1999, c. 753, §1 (new).]
3. **Lease and use of property.** The department may make advantageous use of property acquired or taken pending that use for transportation purposes, including, but not limited to, the leasing of those interests. All such property and interests shall be deemed to be for transportation purposes and shall be exempt from taxation. [1985, c. 13 (new).]
4. **Proceeds from sale, lease or vacating.** The State's share of all gross proceeds from a sale, lease or vacating of property shall be deposited into the Highway Fund and shall only be expended upon allocation by the Legislature. The Federal Government's share shall be deposited in the account from which it originated. [1987, c. 735, §39 (rpr).]

**TITLE 23, SECTION 63; RECORDS OF RIGHT-OF-WAY DIVISION CONFIDENTIAL**

The records and correspondence of the right-of-way divisions of the Department of Transportation and the Maine Turnpike Authority relating to negotiations for and appraisals of property, pending the final settlement for all claims on the project to which they relate, and the records and data of the department and the Maine Turnpike Authority relating to engineering estimates of costs on projects to be put out to bid are confidential and may not be open for public inspection. The records and correspondence of the right-of-way divisions relating to negotiations for and appraisals of property must be open for public inspection after 9 months following the completion date of the project according to the record of the department or authority. Records of claims that have been appealed to the Superior Court must be open for public inspection following the award of the court. [2001, c. 158, §1 (rpr).]

**TITLE 23, SECTION 73; SENSIBLE TRANSPORTATION POLICIES ACT****§73. Transportation policy**

1. **Short title.** This section may be known and cited as the "Sensible Transportation Policy Act." [IB 1991, c. 1, §1 (new).]

2. **Purposes and findings.** The people of the State find that decisions regarding the State's transportation network are vital to the well-being of Maine citizens, to the economic health of the State and to the quality of life that the citizens treasure and seek to protect.

The people also find that these decisions have profound, long-lasting and sometimes detrimental impacts on the natural resources of the State, including its air quality, land and water.

The people further find that substantial portions of the state highway system are in disrepair and improvements to the State's roads and bridges are necessary to provide a safe, efficient, and adequate transportation network throughout the State.

The people further find that the State's transportation network is heavily dependent on foreign oil, that such reliance is detrimental to the health of the State's economy and that the health and long-term stability of the State's economy require increased reliance on more efficient forms of transportation.

The people further find that improvements to the transportation network are necessary to meet the diverse transportation needs of the people of the State including rural and urban populations and the unique mobility requirements of the elderly and disabled.

The people further find that the decisions of state agencies regarding transportation needs and facilities are often made in isolation, without sufficient comprehensive planning and opportunity for meaningful public input and guidance.

[IB 1991, c. 1, §1 (new).]

3. **Transportation policy.** It is the policy of the State that transportation planning decisions, capital investment decisions and project decisions must:

A. Minimize the harmful effects of transportation on public health and on air and water quality, land use and other natural resources; [RR 1991, c. 2, §88 (cor).]

B. Require that the full range of reasonable transportation alternatives be evaluated for all significant highway construction or reconstruction projects and give preference to transportation system management options, demand management strategies, improvements to the existing system, and other transportation modes before increasing highway capacity through road building activities; [RR 1991, c. 2, §88 (cor).]

C. Ensure the repair and necessary improvement of roads and bridges throughout the State to provide a safe, efficient and adequate transportation network; [RR 1991, c. 2, §88 (cor).]

- D. Reduce the State's reliance on foreign oil and promote reliance on energy-efficient forms of transportation; [RR 1991, c. 2, §88 (cor).]
  - E. Meet the diverse transportation needs of the people of the State, including rural and urban populations and the unique mobility needs of the elderly and disabled; [RR 1991, c. 2, §88 (cor).]
  - F. Be consistent with the purposes, goals and policies of the Comprehensive Planning and Land Use Regulation Act; and [RR 1991, c. 2, §88 (cor).]
  - G. Incorporate a public participation process in which local governmental bodies and the public have timely notice and opportunity to identify and comment on concerns related to transportation planning decisions, capital investment decisions and project decisions. The department and the Maine Turnpike Authority shall take the comments and concerns of local citizens into account and must be responsive to them. [RR 1991, c. 2, §88 (cor).] [RR 1991, c. 2, §88 (cor).]
4. **Rulemaking.** The Department of Transportation shall adopt a rule within one year of the effective date of this Act, in coordination with the Maine Turnpike Authority and state agencies including the Department of Economic and Community Development, the State Planning Office and the Department of Environmental Protection, to implement the statewide comprehensive transportation policy. The rule must incorporate a public participation process that provides municipalities and other political subdivisions of the State and members of the public notice and opportunity to comment on transportation planning decisions, capital investment decisions, project decisions and compliance with the statewide transportation policy. [IB 1991, c. 1, §1 (new).]
5. **Applicability to Department of Transportation.** Transportation planning decisions, capital investment decisions and project decisions of the Department of Transportation are governed by and must comply with the transportation policy set forth in this section and rules implementing that policy. [IB 1991, c. 1, §1 (new).]

**TITLE 23, SECTIONS 151 – 161; STATE CLAIMS COMMISSION****§151. Purposes.**

The purposes of this subchapter are to establish an independent, impartial board composed of persons well learned in the elements that may be properly considered in the determination of fair market value of property taken in condemnation proceedings; to empower such board to make awards of just compensation in highway condemnations and to establish before such board a procedure designed to afford to any interested party an opportunity to appear, present his case and have his rights fully protected without the necessity for retaining professional assistance; to thus provide to any interested party a prompt, efficient and inexpensive method of determination of just compensation and prompt payment of all or part of such compensation without prejudice to any right of appeal allowed.

**§152. Composition; appointment; powers**

The State Claims Commission, established by Title 5, section 12004-B, subsection 5, consists of 5 members. Four of the members must be appointed by the Governor, 2 of whom must be qualified appraisers certified as general real estate appraisers pursuant to Title 32, chapter 124 and 2 of whom must be attorneys-at-law. The Governor shall designate one of the attorneys-at-law to be chair. The members of the commission appointed by the Governor shall serve for terms of 4 years. They must be sworn, and for inefficiency, willful neglect of duty or for malfeasance in office may, after notice and hearing, be removed by the Governor on the address of both branches of the Legislature or by impeachment. In case of a vacancy occurring through death, resignation or removal, the Governor shall appoint a successor for the whole term of the member whose place that successor takes, subject to removal as provided in this section. [1999, c. 185, §2 (amd).]

Members of the State Claims Commission must be compensated according to the provisions of Title 5, chapter 379. The daily rate for commission members is \$150. [1995, c. 438, §2 (amd).]

In carrying out its duties, the commission shall not be bound by common law or statutory rules of evidence, or by technical or formal rules of procedure. It shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant and unduly repetitious testimony. A majority of the commission, being present, may determine all matters, but the chairman shall resolve all questions of admissibility. [1987, c. 395, Pt. A, § 92 (rpr).]

The commission shall have authority to make rules and prescribe forms to secure a speedy, efficient and inexpensive disposition of all proceedings. Each member of the commission, for its official purposes, may administer oaths, certify to official acts and issue all process necessary to the performance of the duties of the commission. A reporter shall record hearings when required by the commission. [1987, c. 395, Pt. A, § 92 (rpr).]

The commission must maintain an office in Kennebec County. The Commissioner of Administrative and Financial Services shall appoint, subject to the Civil Service Law, a clerk of the commission to keep its records and to perform such other duties as the commission prescribes. The clerk has authority to certify to all official acts of the commission, administer oaths, issue subpoenas, and

issue all processes, notices, orders or other documents necessary to the performance of the duties of the commission. [1991, c. 780, Pt. Y, §119 (amd).]

The Commissioner of Administrative and Financial Services shall appoint and fix the compensation of a reporter to the commission, and shall review and approve all charges made by such reporter for transcripts of the record of hearings before the commission. The commissioner may appoint, subject to the Civil Service Law, such clerical assistants for the commissioner as the commissioner considers necessary. [1991, c. 780, Pt. Y, §120 (amd).]

The 5th member of the commission shall be appointed for each hearing or series of hearings within the county where the land taken lies. He shall be a member of the board of county commissioners of the county wherein the land taken is situated and shall be appointed by the chairman of the State Claims Commission upon recommendation which shall be made, upon request, by the board of county commissioners of that particular county. In the event that any board of county commissioners should fail to make the required recommendation, then the chairman of the State Claims Commission may appoint a member of such board to serve. He shall be sworn by the chairman of the State Claims Commission and shall serve as a member of that commission only for the particular hearing or hearings for which he is appointed. He shall participate fully in such hearings and the awards made as a result thereof. Each such member shall be paid at the same per diem rate as that fixed for other members of the commission. Any member of the board of county commissioners thus designated shall serve only for the particular hearing or hearings set forth in his appointment and such service shall be as a member of the State Claims Commission and not in his capacity as a member of the board of county commissioners. [1987, c. 395, Pt. A, § 92 (rpr).]

### **§153. Property for highways (REPEALED)**

### **§154. Condemnation proceedings**

If the department determines that public exigency requires the taking of property or any interest in property, or is unable to purchase a property or any interest in a property, or the necessary ways and access to a property at what it considers a reasonable valuation, or if the title in a property is defective, it shall file in the registry of deeds for the county or registry district where the land is located a notice of condemnation which must contain a description of the project specifying the property and the interest taken and the name or names of the owner or owners of record so far as they can be reasonably determined. The department may prescribe procedures for the reasonable determination of the owner or owners of record. The department may join in the notice one or more separate properties whether in the same or different ownership and whether or not taken for the same use. [1997, c. 272, §2 (amd).]

The department shall serve a check in the amount of the determined net damage and offering price and a copy of the notice of condemnation on the owner or owners of record. In case there is multiple ownership, the check may be served on any one of the owners. With that copy the department must serve on each individual owner of record a copy of that part of the plan as relates to the particular parcel or parcels of land taken from that owner and a statement by the department with respect to the particular parcel or parcels of land taken from that owner which must: [1997, c. 272, §2 (amd).]

1. **Date of proposed possession.** State the proposed date of taking possession; [1981, c. 470, Pt. A, § 125 (amd).]
  
2. **Compensation involving severance damage.** Where the department appraisals disclose severance damages, state the amount of compensation itemized in accordance with the department's determination of the following elements of damage:
  - A. The highest and best use of the property at the date of taking;
  - B. The highest and best use of the property remaining after the taking;
  - C. The fair market value of the property before the taking;
  - D. The fair market value of the property after the taking;
  - E. The gross damage, showing separately:
    - (1) The fair market value of the real property taken; and
    - (2) Severance damages including the impairment or destruction of facilities and structures; [1981, c. 470, Pt. A, § 126 (amd).]
  
  - F. Special benefits, accruing to the remaining property by reason of the public improvement for which part of the property is taken, to be set off against severance damages; [1975, c. 431, § 4 (amd).]
  
  - G. The net damage showing separately:
    - (1) The fair market value of the real property taken;
    - (2) The amount of severance damages in excess of special benefits; and
    - (3) The offering price; [1997, c. 272, §2 (amd).]
  
  - H. If the offer is not acceptable and the State cannot negotiate an agreement on the amount of just compensation within 60 days from the date of taking, the owner may apply to the department within said 60 days and have the matter referred to the State Claims Commission for assessment of the damage. Acceptance and cashing this check will not jeopardize negotiation and will not be construed as acceptance of the offer; and [1987, c. 395, Pt. A, § 94 (amd).]  
  
Enclosed Check No.: ..... Amount: \$ .....  
Payable to: .....  
Sent to: .....  
  
[1997, c. 272, §2 (amd).]
  
3. **Compensation not involving severance damage.** Where the department appraisals disclose no severance damages, state the amount of compensation itemized in accordance with the department's determination of the following elements of damage:
  - A. The highest and best use of the property at the date of taking;
  
  - B. [1975, c. 431, § 6 (rp).]

- C. The fair market value of the real property taken as of the date of taking; [1975, c. 431, § 7 (amd).]
  - D. [1975, c. 431, § 8 (rp).]
  - E. Offering price; [1975, c. 431, § 9 (rpr).]
  - F. The check represents the State's offer of just compensation. If the offer is not acceptable and the State cannot negotiate an agreement on the amount of just compensation within 60 days from the date of taking, the owner may apply to the department within the 60 days and have the matter referred to the State Claims Commission for assessment of the damage. Acceptance and cashing this check will not jeopardize negotiation and will not be construed as acceptance of the offer; and [1997, c. 272, §2 (amd).]
  - G. Enclosed Check No.: ..... Amount: \$ .....  
Payable to:  
Sent to:  
[1997, c. 272, §2 (amd).]
- 4. Compensation in cases involving the facilities of a public utility.** Where the condemnation involves the taking of established rights and facilities owned by a public utility and located outside of an established highway right-of-way, no statement by the department as provided above may be sent to the public utility concerned. In any negotiations for an agreement with such public utility with regard to such rights and facilities, the department shall consider, without being limited to, the following elements of damage:
- A. Relocation costs, which must include the cost of acquisition of substitute rights and the cost of establishing either existing or substitute facilities in a new location; [1997, c. 272, §2 (amd).]
  - B. The salvage value of facilities removed.
  - C. Cost of removal; and [1981, c. 470, Pt. A, § 129 (amd).]
  - D. The value of betterments where the function of the substitute facilities exceeds the function of the replaced facilities. [1981, c. 470, Pt. A, § 129 (amd).] [1997, c. 272, §2 (amd).]

Service of the notice of condemnation with a copy of the plan, check and the statement by the department must be made by registered or certified mail or by personal service as required for service of a summons on a complaint in the Superior Court. A notice describing the condemnation must be published once in a newspaper of general circulation in the county where the property is located and such publication constitutes service on any unknown owner or owners or other persons who may have or claim an interest in the property. The notice must consist of an area map depicting the general location of the property interests to be condemned and such other information as the department determines will sufficiently identify the area in which the property interests are to be

taken; an informative summary listing the parcel or item numbers to be condemned, the name of the apparent owner or owners of record of the property interests, the estimated areas to be condemned and the nature of the interests to be condemned; and a location at which the complete notice of layout and taking may be examined. [1997, c. 272, §2 (amd).]

If such owner is a person under the age of 18 years, or an incompetent person, the commission shall cause such notice and check to be served upon the legal guardian of such person or incompetent. If there is no such guardian, then the department shall apply to the judge of probate for the county wherein the property is situated, briefly stating the facts and requesting the appointment of a guardian. The reasonable fee of such guardian as approved by the court must be paid by the department. [1997, c. 272, §2 (amd).]

In case there is a mortgage, tax lien of record or other encumbrance covering any of said land, a copy of the notice of condemnation must be sent forthwith by registered or certified mail to the holder of record of said mortgage, tax lien or other encumbrance addressed to the holder's office or place of abode if known, otherwise to the office, abode or address as set forth in said record. [1997, c. 272, §2 (amd).]

The recording of the notice of condemnation is the date of taking and vests title to the property therein described in the State in fee simple or such lesser state as is specified in the notice of condemnation. Within one year after the completion of the project for which the land is taken, the department shall file a plan for recording in the registry of deeds for the county or registry district where the land is located. [1997, c. 272, §2 (amd).]

If a condemnation proceeding is instituted and then abandoned, the owner of any right, title or interest in any real property included in said proceeding must be reimbursed by the department for reasonable attorney, appraisal and engineering fees, actually incurred because of the condemnation proceedings. [1997, c. 272, §2 (amd).]

### **§155. Negotiation**

The department shall have 60 days from the date of taking within which to negotiate with the owner or owners of record for an agreement as to the amount of just compensation. If within that time the owner rejects the State's offer of just compensation, such owner may apply to the department and have the matter referred to the State Claims Commission for assessment of the damage. If, at the expiration of that time, no such agreement for just compensation has been made, the department shall immediately file a petition with the State Claims Commission setting forth the pertinent facts including the names and addresses of the owner or owners of record and the holders of any mortgages, tax liens or other encumbrances, a copy of the notice of condemnation, the statement of the department and a plan of the property involved as served upon the owner or owners of record in accordance with section 154 and requesting a hearing and an award of just compensation. [1987, c. 395, Pt. A, § 97 (amd).]

### **§156. Hearing before board**

The State Claims Commission shall immediately enter the petition of the department upon its docket and assign a date for hearing at the earliest possible date. The chairman of the board shall

assign no more than 3 members of the board for hearings, one of whom shall be an appraiser and one an attorney at law. Notice of the time and place for the hearing shall be mailed by registered or certified mail to the department and to the owner or owners of record and to the holders of any mortgage, tax lien or any other encumbrance on the property involved at least 14 days before the date of the hearing. In the event the notice required is returned to the State Claims Commission marked "refused" or "unclaimed" by the United States post office, the State Claims Commission may, at its option, reschedule the hearing by giving the notice required in this paragraph, or it may cause the matter to be heard on the day originally scheduled by causing service to be made upon the party not served by certified or registered mail in a manner allowed for service of a summons on a complaint in the Superior Court, which notice shall be served at least 5 days before the originally scheduled hearing. The hearing shall be held in quarters suitable for a full presentation of all evidence and located as conveniently as possible for all interested parties in the county where the land is situated. Before making an award, the State Claims Commission shall view the property involved with or without the presence of the interested parties, but it shall first notify the interested parties of the time when it will view the property. The department shall be represented at the hearing and may present in open hearing evidence as to title, engineering maps and data, and its opinion, evidence and appraisal or appraisals as to the fair market value of the property involved before and after the taking. In all matters where a verbatim record of the proceedings is made by an official board reporter, a transcript of the same shall be furnished to the interested parties, upon request, and upon payment of a reasonable charge for transcribing and preparing such record. In making its award, the State Claims Commission shall not be limited by the range of testimony produced before it but may reach its decision on the basis of the view, the testimony and its own judgment. The State Claims Commission may continue a hearing from time to time for cause shown or by agreement of parties; and where such continuance is made at the request of the landowner, may require that interest be waived for the period of the continuance. [1987, c. 395, Pt. A, § 98 (amd).]

As promptly as possible after the conclusion of the hearing, the State Claims Commission shall make an award in writing specifying: [1987, c. 395, Pt. A, § 98 (amd).]

1. **Owners and encumbrances.** The owner or owners of record and the holder of any mortgage, tax lien or other encumbrance of record; [1965, c. 297, § 6 (amd).]
2. **Nature of interest taken.** The nature of the interest taken;
3. **Commission's decision on elements of damage.** The State Claims Commission's decision as to each of the elements of damage listed in section 154, subsection 2 or 3, or the elements of damage as set forth in section 154, subsection 4, and such other elements of damage as are legally compensable; [1987, c. 395, Pt. A, § 98 (amd).]
4. **Gross damage.** The gross damage which shall be the net damage not including interest; [1965, c. 297, § 7 (rpr).]
5. **Net amount of award.** The net amount of the award which shall be the net damage less the amount paid the owner or owners at the date of taking; [1965, c. 297, § 8 (new).]

6. **Interest on award.** The interest, if any, due on the net amount of the award from the date of taking to the date of the award; [1965, c. 297, § 8 (new).]
7. **Award.** The award which shall be the net damage, less the amount paid the owner or owners at the date of taking plus interest on the net amount of the award; and [1981, c. 470, Pt. A, § 130 (amd).]
8. **Withholding.** The withholding, if any, authorized pursuant to section 244-A, subsection 4. [1973, c. 22, § 1 (new).]

No interest may be allowed on so much of the net damage that has been paid to the owner or owners. [1991, c. 684, §2 (rpr).]

An attested copy of each award must be sent immediately to the Department of Transportation and to the party or parties named in the award. The State Claims Commission shall state by letter the date it forwarded the award and all parties shall within 30 days designate to the commission the award or awards from which an appeal will be taken to Superior Court. If no appeal is taken within 30 days of the date of issuance of the commission award, the State Claims Commission shall promptly notify the Department of Transportation. The Department of Transportation shall, within 60 days from the date of issuance of the commission award, pay the awarded amount to the party or parties named in the award. [1991, c. 684, §2 (rpr).]

Service as required by this section must be made in the manner prescribed by Rule 5 of the Maine Rules of Civil Procedure. [1991, c. 684, §3 (rpr).]

Upon certification by the Department of Transportation that after due diligence the address of owners of record can not be determined or when the State Claims Commission notice by mail is returned to the commission unclaimed or unknown or where personal service can not be made, the chair of the commission may order service by publication. Notice of the time and place of the review and hearing must be published once in a newspaper of general circulation in the county in which the subject property is located. The commission shall then proceed with the hearing as in other cases and the appeal provisions must be available to the Department of Transportation and the record owner or owners, or any one of them, who appears and makes application for appeal pursuant to section 157. [1991, c. 684, §4 (amd).]

The chair of the State Claims Commission may appoint a guardian ad litem to protect the interest and rights of any minor or incompetent persons notified under this section and determine and set reasonable compensation for that guardian ad litem. This compensation must be paid by the Department of Transportation. [1991, c. 684, §5 (new).]

After the appeal period from the decree of the State Claims Commission or a judgment of any court has expired, any sum of money directed by a decree of the commission or by a judgment of any court to be paid over that remains unclaimed for 60 days must be disposed of consistent with Title 33, chapter 41. [1997, c. 508, Pt. A, §3 (aff); Pt. B, §5 (amd).]

Notwithstanding Title 1, section 302, this section applies to all actions and proceedings pending on September 14, 1979. [1991, c. 684, §7 (amd).]

**§157. Appeals**

The Department of Transportation or any party or parties aggrieved by an award by the State Claims Commission may appeal to the Superior Court in the county where the land is situated within 30 days from the date the award was forwarded by the commission. This appeal is de novo and is taken by filing a complaint setting forth substantially the facts upon which the case will be tried like other civil cases. [1991, c. 684, §8 (rpr).]

The court shall determine the same by a verdict of its jury or, if all parties agree, by the court without a jury or by a referee or referees and shall render judgment for just compensation, with interest where such is due, and for costs in favor of the party entitled thereto; except that if the department appeals and if the department does not prevail, interest where such is due and costs shall be paid by the department and the owner or owners shall be reimbursed by the department for a reasonable attorney's fee. [1971, c. 593, § 22 (amd).]

If either the owner or owners of record or the department appeal and the just compensation finally awarded, exclusive of interest, is less than the gross damage determined by the State Claims Commission, exclusive of any interest allowed, then the court shall give judgment in favor of the department for the excess of the gross damage determined by the State Claims Commission, inclusive of interest, over the final award and for its costs from the time of appeal. Execution may be issued on such judgment. [1987, c. 395, Pt. A, § 99 (amd).]

If either the owner or owners of record or the department appeal and the just compensation finally awarded, exclusive of interest, is not less than the gross damage determined by the State Claims Commission, exclusive of any interest allowed, then the court shall give judgment to the owner or owners for the amount in which the final award is in excess of the amount paid the owner or owners and for interest on such excess from the date of taking and for costs from the time of appeal. The clerk shall certify the final judgment of the court to the department, which shall enter the same of record and order the same to be paid by the Treasurer of State. The judgment and certificate of judgment shall specify the withholding, if any, authorized pursuant to section 244-A, subsection 4. [1991, c. 684, §9 (amd).]

In case of the decease of any person entitled to claim damages under this subchapter, the heirs, executors, administrators or assigns of such person shall have the right to prosecute the appeal provided for in this section under the same conditions and limitations as the original owner had, and may be substituted for the appellant in any proceedings commenced by said appellant. In case any landowner assigns, transfers or sells his right to claim damages, his assignee, transferee or vendee shall have the same rights as above set forth.

**§158. Withdrawal of money deposited (REPEALED)****§159. Interpleader**

If difficult questions of law should arise before the State Claims Commission as to entitlement to or apportionment of just compensation, then it is authorized to make a blanket award to all parties interested. If no appeal is taken and no agreement is reached by the parties named in the award within 60 days from the date of such award, the State Claims Commission shall certify the facts and

legal questions to the department. The department shall then interplead the parties named in the award by a complaint filed in the Superior Court in the county wherein the land is situated and shall pay in the amount of the award to the clerk of courts of the county to be paid in accordance with the court's order. For purposes of this section, the department shall be acting to prevent double or multiple liability. [1989, c. 502, Pt. A, §88 (amd).]

### **§160. Property management**

Any property taken or acquired for highway purposes may be leased, let or rented by the department to a displaced person pending advantageous use for highway purposes. The department may renovate and maintain property pending such advantageous use. The proceeds from leasing, letting or renting such property shall be credited to the fund from which payment was made for the acquisition. The consideration paid by the tenant for occupancy shall not exceed the fair rental value of the property based on short-term occupation. [1971, c. 593, § 22 (amd).]

### **§161. Incidental expense payments**

1. **Reimbursement.** The department, as soon as practicable after the date of payment of just compensation, shall reimburse the owner from whom land or rights in land were acquired for highway purposes, to the extent the department deems fair and reasonable, for expenses such owner necessarily incurred for:
  - A. Recording fees, transfer taxes and similar expenses, if any, incidental to conveying such property to the State; [1971, c. 333, § 5 (new).]
  - B. Penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and [1971, c. 333, § 5 (new).]
  - C. The pro rata portion of real property taxes paid which are allowable to a period subsequent to the date of vesting title in the State, or the effective date of possession of such real property by the State, whichever is earlier. [1971, c. 333, § 5 (new).] [1971, c. 593, § 22 (amd).]
2. **Determination.** Any determination by the department in the administration of this section shall be final and nothing herein shall be construed to give any person a cause of action in the State Claims Commission or the Superior Court. [1987, c. 395, Pt. A, § 102 (amd).]

**TITLE 23, SECTIONS 241 – 247; RELOCATION ASSISTANCE****§241. Purpose**

The prompt and equitable relocation and reestablishment of persons, businesses, farm operations and nonprofit organizations displaced as a result of state or state aid highway projects are necessary to insure that a few individuals do not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole. Relocation payments and advisory assistance are to be made available to all persons so displaced in accordance with this subchapter. [1981, c. 470, Pt. A, § 133 (amd).]

**§242. Definitions**

As used in this subchapter, unless the context otherwise indicates, the following terms shall have the following meanings. [1979, c. 541, Pt. A, §158 (amd).]

1. **Average annual net earnings.** [1989, c. 208, §§4, 21 (rp).]
2. **Business.** "Business" shall mean any lawful activity, excepting a farm operation conducted primarily:
  - A. For the purchase, sale, lease and rental of personal and real property and for the manufacture, processing or marketing of products, commodities or any other personal property; [1971, c. 333, §1 (new).]
  - B. For the sale of services to the public; or [1971, c. 333, §1 (new).]
  - C. By a nonprofit organization; or [1971, c. 333, §1 (new).]
  - D. Solely for the purposes of section 244, for assisting in the purchase, sale, resale, manufacture, processing or marketing of products, commodities, personal property or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted. [1971, c. 333, §1 (new).][1971, c. 333, §1 (new).]
- 2-A. **Comparable replacement dwelling.** "Comparable replacement dwelling" means any dwelling that is:
  - A. Decent, safe and sanitary; [1989, c. 208, §§5, 21 (new).]
  - B. Adequate in size to accommodate the occupants; [1989, c. 208, §§5, 21 (new).]
  - C. Within the financial means of the displaced person; [1989, c. 208, §§5, 21 (new).]
  - D. Functionally equivalent to the displacement dwelling; [1989, c. 208, §§5, 21 (new).]

- E. In an area not subject to unreasonably adverse environmental conditions; and [1989, c. 208, §§5, 21 (new).]
  - F. In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities, facilities, services, and the displaced person's place of employment. [1989, c. 208, §§5, 21 (new).] [1989, c. 208, §§5, 21 (new).]
- 2-B. Department.** "Department" means the Department of Transportation. [1989, c. 208, §§5, 21 (new).]
- 3. Displaced person.** "Displaced person" is defined as follows.
- A. "Displaced person" means:
    - (1) Any person who moves from real property or moves that person's personal property from real property:
      - (a) As a direct result of a written notice of intent to acquire or the acquisition of that real property in whole or in part for a program or project undertaken by the department; or
      - (b) On which the person is a residential tenant or conducts a small business, a farm operation or a business defined in subsection 2, as a direct result of rehabilitation, demolition or such other displacing activity as the department prescribes under a program or project undertaken by the department in any case in which the department determines that the displacement is permanent; and
    - (2) Solely for the purposes of section 243 and section 244, subsections 1 and 2, any person who moves from real property or moves that person's personal property from real property:
      - (a) As a direct result of a written notice of intent to acquire or the acquisition of other real property, in whole or in part, on which the person conducts a business or farm operation, for a program or project undertaken by the department; or
      - (b) As a direct result of rehabilitation, demolition or such other displacing activity as the department prescribes of other real property on which the person conducts a business or a farm operation, under a program or project undertaken by the department where the department determines that the displacement is permanent. [1989, c. 208, §§6, 21 (new).]
  - B. "Displaced person" does not include:

- (1) A person who has been determined, according to criteria established by the department, either to be unlawfully occupying the displacement dwelling or to have occupied the dwelling for the purpose of obtaining assistance under this subchapter; and
- (2) In any case in which the department acquires property for a program or project, any person, other than a person who was an occupant of the property at the time it was acquired, who occupies such property on a rental basis for a short term or a period subject to termination when the property is needed for the program or project. [

1989, c. 208, §§6, 21 (new).] [1989, c. 208, §§6, 21 (rpr).]

4. **Existing patronage.** "Existing patronage" means either the volume of clientele or the annual net earnings for the 2 taxable years immediately prior to the taxable year in which the business was displaced. [1989, c. 208, §§7, 21 (rpr).]
5. **Farm operation.** "Farm operation" shall mean any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support. [1971, c. 333, §1 (new).]
6. **Federal agency.** "Federal agency" shall mean any department, agency or instrumentality in the executive branch of the Federal Government, except the National Capitol Housing Authority, any wholly-owned government corporation, except the District of Columbia Redevelopment Land Agency, and the Architect of the Capitol, the Federal Reserve Banks and branches thereof. [1971, c. 333, §1 (new).]
7. **Mortgage.** "Mortgage" shall mean such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of this State, together with the credit instruments, if any, secured thereby. [1971, c. 333, §1 (new).]
8. **Person.** "Person" shall mean any individual, partnership, corporation or association. [1971, c. 333, §1 (new).]
9. **Program or project.** "Program or project" means any highway construction or related activity undertaken by the Department of Transportation on a state or state-aid highway and any other activity undertaken and authorized by law to be carried out by the department. [1989, c. 208, §§8, 21 (amd).]
- 9-A. **Small business.** "Small business" means any business having fewer than 500 employees working at the site being acquired or permanently displaced by a program or project. [1989, c. 208, §§9, 21 (new); c. 866, Pt. B, §1 (amd); §26 (aff).]
10. **State agency.** "State agency" means any department, agency or instrumentality of this State or any political subdivision of this State, any department, agency or instrumentality of

2 or more states, or 2 more political subdivisions of the State or states and any person who has the authority to acquire property by eminent domain under state law. [1989, c. 208, §§10, 21 (amd).]

### §243. Relocation assistance advisory services

1. **Relocation assistance advisory program.** Whenever the acquisition of real property for a department program or project will result in the displacement of any person, the department shall provide a relocation assistance advisory program for displaced persons which shall offer the services described in subsection 2. If the department determines that any person occupying property immediately adjacent to the real property acquired is caused substantial economic injury because of the acquisition, the department may offer the person relocation advisory services under the program. [1989, c. 208, §§11, 21 (amd).]
2. **Program to include.** Each relocation assistance advisory program required by subsection 1 shall include such measures, facilities or services as may be necessary or appropriate in order to:
  - A. Determine and make timely recommendations on the needs and preferences, if any, of displaced persons, for relocation assistance; [1989, c. 208, §§11, 21 (amd).]
  - B. Provide current and continuing information on the availability, sales prices and rental charges of comparable replacement dwellings for displaced homeowners and tenants, and of comparable commercial properties and on suitable locations for displaced businesses and farm operations; [1989, c. 208, §§11, 21 (amd).]
  - C. Assure that, within a reasonable period of time, prior to displacement there will be available, to the extent that can reasonably be accomplished, in areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced, decent, safe and sanitary dwellings, equal in number to the number of and available to the displaced persons who require these dwellings and reasonably accessible to their places of employment; [1989, c. 208, §§11, 21 (amd).]
  - D. Assist a person displaced from that person's business or farm operation in obtaining and becoming established in a suitable replacement location; [1989, c. 208, §§11, 21 (amd).]
  - E. Supply information concerning federal, state and local programs, which may be of assistance to displaced persons, and supply technical assistance to persons in applying for assistance under these programs; and [1989, c. 208, §§11, 21 (amd).]
  - F. Provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to relocation. [1971, c. 333, § 1 (new).] [1989, c. 208, §§11, 21 (amd).]

3. **Coordination.** The department shall coordinate relocation activities with project work, and other planned or proposed federal, state or local agency actions in the community or nearby areas which may affect the efficient and effective carrying out of relocation assistance programs. [1989, c. 208, §§11, 21 (amd).]
4. **Renter eligibility.** Notwithstanding section 242, subsection 3, paragraph B, subparagraph(2), in any case in which the department acquires property for a program or project, any person who occupies that property on a rental basis for a short term or for a period subject to termination when the property is needed for the program or project shall be eligible for advisory services to the extent determined by the department. [1989, c. 208, §§11, 21 (new).]

#### §244. Moving and related expenses

1. **Payments.** Whenever a program or project to be undertaken by the department will result in the displacement of any person, the department shall make a payment to any displaced person, upon proper application on forms approved by the department, for:
  - A. Actual reasonable expenses in moving that person, that person's family, business, farm operation or other personal property; [1989, c. 208, §§12, 21 (amd).]
  - B. Actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the department; [1989, c. 208, §§12, 21 (amd).]
  - C. Actual reasonable expenses, but not to exceed \$1,000, in searching for a replacement business or farm; and [1989, c. 208, §§12, 21 (amd).]
  - D. Actual reasonable expenses necessary to reestablish a displaced farm, nonprofit organization or small business at its new site, in accordance with criteria to be established by the department, but not to exceed \$10,000. [1989, c. 208, §§12, 21 (new).] [1989, c. 208, §§12, 21 (amd).]
2. **Fixed payments for residential displacements.** Any displaced person eligible for payments under subsection 1 who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection 1 may receive a moving expense and dislocation allowance, which shall be determined according to a schedule established by the department. [1989, c. 208, §§12, 21 (amd).]
3. **Fixed payments for business or farm displacements.** Any displaced person eligible for payments under subsection 1 who is displaced from that person's place of business or farm operation and who is eligible under criteria established by the department may elect to accept the payment authorized by this subsection in lieu of the payment authorized by subsection 1. The payment shall consist of a fixed payment in an amount to be determined according to criteria established by the department, except that any such payment shall be not less than \$1,000 nor more than \$20,000. A person whose sole business at the

displacement dwelling is the rental of property to others shall not qualify for a payment under this subsection. In the case of a business no payment may be made under this subsection unless the department is satisfied that the business:

- A. Cannot be relocated without a substantial loss of its existing patronage; and [1989, c. 208, §§12, 21 (amd).]
- B. Is not part of a commercial enterprise having more than 3 other establishments not being acquired by the department, which are engaged in the same or similar business. [1989, c. 208, §§12, 21 (amd).] [1989, c. 208, §§12, 21 (amd).]

#### **§245. Administration**

The department shall carry out the functions of this subchapter either with its personnel or through any federal, state or municipal agency having an established organization for conducting relocation assistance programs; and is authorized and empowered to make all contracts and do all things necessary to fulfill the intent and purposes of this subchapter. [1989, c. 208, §§17, 21 (amd).]

#### **§246. Appeal**

1. **State Claims Commission.** If the department is unable to negotiate any payment authorized under section 244, subsection 1, paragraph A, or section 244-A, subsection 1, at what it deems to be a reasonable amount, either the department or the displaced person, or both, may apply to the State Claims Commission in writing for a determination and assessment. The proceedings shall then be the same as in condemnation proceedings under subchapter III. [1987, c. 395, Pt. A, § 104 (amd).]
2. **Commissioner of Transportation.** Any person aggrieved by a determination as to eligibility for any payment, except those enumerated in subsection 1, authorized by this subchapter may have that person's application reviewed by the commissioner or the commissioner's delegate whose determination shall be final and nothing in this section may be construed to give any person a cause of action in the State Claims Commission or the Superior Court. [1989, c. 208, §§19, 21 (amd).]

#### **§247. Limitation**

Nothing contained in this subchapter shall be construed as creating in any eminent domain proceeding an element of damages not in existence on the date of enactment hereof. [1971, c. 333, § 1 (new).]

Any payments authorized under this subchapter and received by a displaced person shall not be considered income for purposes under the Internal Revenue Code, or resources of any recipient of public assistance.

**TITLE 23, SECTIONS 301 – 307; CONTROLLED ACCESS HIGHWAYS****§301. Definition .**

A controlled access highway is a highway on which, in the interest of safety and efficiency of operation, abutting property owners have no right of direct access and on which the type and location of all access connections are determined and controlled by the department. [1971, c. 593, § 22 (amd).]

**§302. Use**

The department shall have full power and authority to lay out, establish, acquire, open, construct, improve, maintain, discontinue and regulate the use of controlled access highways within this State in the same manner or manners in which said department may now lay out, establish, acquire, open, construct, improve, maintain, discontinue and regulate the use of highways within the State. The department shall have any and all other additional authority and power relative to such controlled access highways as they now respectively possess relative to highways, including the authority and power to acquire or accept title to the lands or rights of way needed for the same. [1971, c. 593, § 22 (amd).]

In connection with the laying out and establishment of a controlled access highway the department may take in fee or lesser estate, by purchase, gift, devise or by eminent domain under chapters 1 to 19, part or all of any part of land adjoining the highway location which, by reason of such laying out and establishment of a controlled access highway, has been severed from legal access to any public highway. [1971, c. 593, § 22 (amd).]

**§303. Easements of access**

Where an existing highway has been designated as, or included within, a controlled access highway by said department, existing easements of access may be so extinguished by purchase or by taking under eminent domain, in accordance with any existing method now exercised by said department in purchasing or taking land for highway purposes. Access to such controlled access highway from any existing highway, road or street may be regulated and restricted by the department. Access to any such controlled access highway from any new highway, road or street shall be subject to the consent and approval of the department. [1971, c. 593, § 22 (amd).]

**§304. Commercial enterprises prohibited**

No commercial enterprise or activity shall be authorized or conducted by the department or any agency or officer of the State within or on the property or right-of-way acquired for any controlled access highway under this chapter, except that the department may permit the erection or installation of electric power, telegraph, telephone or pipe line facilities within the controlled area. [1971, c. 593, § 22 (amd).]

**§305. Signs showing service facilities**

The location of service, fuel and recreational facilities may be indicated to the users of any controlled access highway by appropriate signs erected within the right-of-way, at or near the junction of such access roads as may be provided. The size, style, specifications and location of such signs shall be determined by the department. [1971, c. 593, § 22 (amd).]

**§306. Application of provisions**

This chapter does not apply to highways other than those in the state highway system as designated by the department nor to those in the compact or built-up areas of any city or town as defined in title 29-A, section 2074, subsection 2, except with the approval of the municipal officers of the city or town wherein such compact or built-up area is situated. [1995, c. 65, Pt. A, §61 (amd); §153 (aff); Pt. C, §15 (aff).]

**§307. Powers as supplementary and additional**

This chapter shall be considered supplementary and in addition to any and all other powers now exercised by the department. [1971, c. 593, § 22 (amd).]

**TITLE 23, SECTIONS 651 –654; LAYING OUT, ALTERING AND DISCONTINUING HIGHWAYS****§651. State and state aid highways**

The department may alter, widen or change the grade of any state or state aid highway whenever in its judgment the public exigency may require, and may lay out, establish and open a new highway as a state highway, and upon appropriate petition from municipal officers may lay out, establish and open a new highway as a state aid highway. It may discontinue a highway, or a portion thereof, as a state or state aid highway and the same shall be thereafter maintained by the town or county originally liable therefor except as otherwise provided. [1971, c. 593, §22 (amd).]

The department may preserve and develop the natural scenic beauty along and adjacent to any state or state aid highway to integrate the public improvement with the aesthetics of the area traversed by the highway and may establish and maintain rest areas, turn-outs and parking strips for the suitable accommodation of the public whenever in its judgment the public exigency may require. [1971, c. 593, §22 (amd).]

The department may construct ditches and drains to carry water away from any highway that is under its supervision or that it is constructing, and over or through any lands of persons or corporations when it deems it necessary for public convenience or for the proper care of such highway. No such ditch or drain shall pass under or within 20 feet of any dwelling house without the consent of the owner thereof. [1971, c. 593, §22 (amd).]

Wherever, on or along public highways, ditches or drains have existed for a period of 20 years or longer, which cause water to be flowed away from the highway, there shall be a conclusive presumption that easements for such flowage from such ditches or drains exist, but only to the extent of the original flowage. This paragraph does not apply in the cases protected by section 6025. [1987, c. 141, Pt. B, §18 (amd).]

Whenever a municipality directly contributes to the construction or alteration of any highway, the department shall take into consideration the views of the municipal officers as to the location of such highway. [1971, c. 593, §22 (amd).]

The department, at its discretion, may authorize a person, corporation or entity who has had conditions imposed pursuant to Title 23, section 704-A or by other governmental review to perform construction work on the state or state aid highway system and on town ways. The performance of the work must be in compliance with the department's standards for highway and bridge construction, traffic control and bonding and any other standards or conditions the department may impose. All of the department's expenses and administrative costs relating to the work must be paid by the person authorized to perform the work. Notwithstanding the Maine Tort Claims Act, Title 14, chapter 741, the State or its employees are immune from suit for damages arising from any activities performed in connection with this work. [1999, c. 468, §1 (amd).]

**§652. Proceedings on damage claims**

1. **Change of grade.** Whenever the department changes the grade of any state or state aid highway, as provided in chapters 1 to 19, to the injury of an owner of adjoining land, that owner may apply, within 24 months after completion of the work according to the records of the department, to the department in writing for a determination and assessment of damages. If the department is unable to settle that damages at what it deems a reasonable amount, the department or interested parties may apply to the State Claims Commission in writing for a determination and assessment of the damages. The proceedings shall then be the same as in condemnation cases. [1987, c. 769, Pt. A, §83 (rpr).]
2. **Private water supplies.** In the event an owner of land adjacent to a state or state aid highway conceives that a private water supply on that land has been destroyed or rendered unfit for human consumption by the department constructing, reconstructing or maintaining the highway, such owner may apply in writing to the department for a determination of the alleged cause and assessment of the damage and if such claim is founded on construction, the owner shall present such application within 24 months after completion date of the work as that date appears in the records of the department.

The application shall set forth the name and address of the owner, the owner's source of title, the location of the property, a description of the damage, the cause to which the damage is attributed and the name and address of any lien holder.

- A. If the department determines that it did not cause the alleged damage to such water supply, a copy of the determination shall be served by registered or certified mail or by personal service as required for service of a summons on a complaint in the Superior Court. [1971, c. 593, § 22 (amd).]
- B. If the department determines that any damage to the privately owned water supply was caused by the department constructing, reconstructing or maintaining the highway, a copy of the determination shall be served by registered or certified mail or by personal service as required for service of a summons on a complaint in the Superior Court and shall set forth an offer of settlement which shall be either:
  - (1) To replace the water supply; or
  - (2) To repair the damage to the water supply; or
  - (3) To pay a designated sum of money; or
  - (4) To purchase the realty served by the water supply in the event the cost of repair or replacement of the water supply exceeds the appraisal value of the realty. [1971, c. 593, § 22 (amd).]
- C. The department may issue rules and regulations in accordance with standards of the Department of Human Services and the Public Health Service regarding water potability for the determination of the degree of contamination, pollution or fitness for domestic use. [1975, c. 293, § 4 (amd).]

- D. The department shall in its determination consider the necessity for installation or replacement of piping, tanks, pumps, heating systems or other related fixtures. The Department of Transportation shall not condition installation or replacement on the owner giving possession or title of any privately owned piping, tanks, pumps, heating systems or other related fixtures on his land to any agency of this State, unless agreed to by the property owner. [1975, c. 2 (new).]
- E. If the department is unable to settle at what it deems a reasonable settlement, the department or owner may apply to the State Claims Commission in writing for a determination of the alleged cause and assessment of the damage. The proceedings shall then be the same as in condemnation cases. [1987, c. 769, Pt. A, §84 (rpr).]
- F. This subsection shall not apply to private water supplies after June 26, 1969 where the location does not allow for or provide for adequate surface drainage. [1973, c. 625, § 132 (amd).]
- G. This subsection shall not apply to private water supplies now located or hereafter located within the right-of-way limits. [1969, c. 435 (new).]
- H. This subsection shall not apply to any private water supply damaged by construction, reconstruction or maintenance which the department determines to have already been contaminated or polluted by another source to the degree said contamination or pollution would have rendered it unfit for human consumption. [1971, c. 593, § 22 (amd).] [1987, c. 769, Pt. A, §84 (amd).]
3. **Private water supplies within the right-of-way.** In order to prevent undue hardship to properties served by water systems existing within the right-of-way of state and state aid highways prior to June 26, 1969, and which are the sole source of water supply to the property, and which are destroyed or altered, subsequent to the effective date of this Act, due to highway construction or reconstruction, the Department of Transportation is authorized to compensate the owners for such loss as may be determined equitable by the department. [1979, c. 140 (new)]

### §653. Highway boundaries

1. **Authority.** The department may establish the boundary lines, limits or locations of any or all state highways and state aid highways and cause durable monuments to be erected at the angles thereof. [1999, c. 188, §1 (new).]
2. **Reestablishment of lost or doubtful boundaries.** Whenever in the opinion of the department the boundary lines, limits or location of any state highway or state aid highway or any part thereof are lost, uncertain or doubtful, the department may reestablish those lines, limits or location; land lying within those lines is a part of the highway right-of-way. The department shall file with the town clerk of the town in which the highway is located and with the registry of deeds in the county in which the highway is located maps showing the boundary lines, limits or location of such a reestablished highway, and those lines,

boundaries, limits and location are those of the reestablished highway. The department shall post descriptions of those parts of such highways that lie within towns in one conspicuous place in those towns and at 2 points along the highway, and it shall publish a description of those parts of highways that lie within any county in a newspaper, if any, in that county.

In the absence of record, plan or layout sufficient to reestablish the boundary lines, limits or location of a state highway or state aid highway, the width of a state highway or state aid highway is deemed to extend to and include the area lying outside the shoulders and ditch lines and within any landmarks or historic features such as fences, fence posts, tree rows, stone walls, corner stones or other monuments indicating the boundary line.

In the absence of record, plan or layout or any landmarks or historic features that evidence the location of the boundaries of the right-of-way, the width of a state highway or state aid highway is deemed to extend to and include the sidewalks, shoulders and ditch lines adjacent to that highway and to the top of cuts or toe of fills where they exist.

Any person aggrieved by the reestablishment of boundary lines, limits and location of a reestablished highway may file a complaint for the assessment of damages to the Superior Court in the county where the reestablished highway is located within 60 days from the filing of maps with the registry of deeds, and not thereafter, and the court shall assess the damages, if any, by jury, as long as the reestablished boundary lines, limits or location are not the same as originally established. The department shall pay from its funds all expenses incurred and the amount of final judgment and costs if damages are awarded, except that the amount of the final judgment and costs must be paid by the plaintiff if the plaintiff fails to recover any damages.

[1999, c. 188, §1 (new).]

#### **§654. Detour roads and signs**

Before a state or state-aid highway is closed due to construction, the department shall establish a practical detour route and properly sign the route at all intersections. The detour route shall be maintained in a condition adequate to serve traffic until the state or state-aid highway under construction is opened to traffic. Upon completion of the construction project all detour signs shall be removed. [1989, c. 108, §1 (rpr).]

**TITLE 23, SECTION 2952 – LONGTIME BUILDINGS AND FENCES AS BOUNDS – ESTOPPEL****§2952. Longtime buildings and fences as bounds; estoppel**

When buildings or fences have existed more than 20 years fronting upon any way, street, lane or land appropriated to public use, the bounds of which cannot be made certain by records or monuments, such buildings or fences shall be deemed the true bounds thereof. When the bounds can be so made certain, no time less than 40 years will justify their continuance thereon, and on indictment and conviction they may be removed. Persons owning lands beside a highway or town way on which are buildings or fences that encroach within the limits of said way may, by a writing under seal by them signed and acknowledged and recorded in the registry of deeds for the county or registry district in which the land lies, admit to the municipal officers of the town in which said way exists the true bounds or limits of said way and the extent of their wrongful occupancy thereof. Thereafter such persons, and all claiming title under or through them, shall be estopped from asserting any right to the continuance of such buildings or fences within said limits for the full term of 40 years from the date of such deed.

**TITLE 23, SECTIONS 3021 – 3035; ACQUISITION OF PROPERTY FOR HIGHWAY PURPOSES****§3021. Definitions**

1. **Highway purposes.** "Highway purposes" means use as a town way and those things incidental to the laying out, construction, improvement, maintenance, change of location, alignment and drainage of town ways, including the securing of materials therefore; provision for the health, welfare and safety of the public using town ways; provision for parking places, rest areas and preservation of scenic beauty along town ways. [1975, c. 711, § 8 (new).]
2. **Public easement.** "Public easement" means an easement held by a municipality for purposes of public access to land or water not otherwise connected to a public way, and includes all rights enjoyed by the public with respect to private ways created by statute prior to the effective date of this Act. Private ways created pursuant to sections 3001 and 3004 prior to the effective date of this Act are public easements. [1975, c. 711, § 8 (new).]
3. **Town way.** "Town way" means:
  - A. An area or strip of land designated and held by a municipality for the passage and use of the general public by motor vehicle; [1981, c. 702, Pt. Z, § 2 (new)]
  - B. All town or county ways not discontinued or abandoned before July 29, 1976; and [1981, c. 702, Pt. Z, § 2 (new).]
  - C. All state or state aid highways, or both, which shall be classified town ways as of July 1, 1982, or thereafter, pursuant to section 53. [1981, c. 702, Pt. Z, § 2 (new).] [1981, c. 702, Pt. Z, § 2 (rpr).]

**§3022. Laying out of town ways and public easements**

The municipal officers may, personally or by agency, lay out, alter or widen town ways. They shall give written notice of their intentions posted at least 7 days in 2 public places in the municipality and in the vicinity of the way and shall in the notice describe the proposed way. [1975, c. 711, § 8 (new).]

The municipal officers may, upon the petition of any person, lay out, alter or widen a town way. [1975, c. 711, § 8 (new).]

The municipal officers may on petition therefor, personally or by agency, lay out a public easement for any occupant of land or for owners who have cultivated land in the municipality if the land will be connected to a town way or highway after the establishment of the public easement. [1979, c. 127, § 153 (rpr).]

After a public easement has been laid out, it may be taken pursuant to section 3023. Notwithstanding any other provision of this chapter, public easements laid out under this section are

limited to rights of access by foot or motor vehicle as defined in Title 29-A, section 101, subsection 42. [1995, c. 65, Pt. A, §65 (amd); §153 (aff); Pt. C, §15 (aff).]

### **§3023. Eminent domain**

A municipality may take property or interests therein for highway purposes if the municipal officers determine that public exigency requires the immediate taking of such property interests, or if the municipality is unable to purchase it at what the municipal officers deem reasonable valuation, or if title is defective. [1975, c. 711, § 8 (new).]

In municipalities where the municipal officers have the legislative power of appropriation, the municipal officers shall file with the municipal clerk a condemnation order that includes a detailed description of the property interests to be taken, which shall specify its location by metes and bounds, the name or names of the owner or owners of record so far as they can be reasonably determined and the amount of damages determined by the municipal officers to be just compensation for the property or interest therein taken. The municipal officers shall then serve upon the owner or owners of record a copy of the condemnation order and a check in the amount of the damages awarded. In the event of multiple ownership, the check may be served on any one of the owners. Title shall pass to the municipality upon service of the order of condemnation and check or upon recordation in accordance with section 3024, whichever occurs first. [1975, c. 711, § 8 (new).]

In towns where the town meeting has the legislative power of appropriation, the municipal officers shall file the condemnation order described in the previous paragraph with the town clerk and send a copy to the owner or owners of record by registered mail. No interest shall pass to the town unless an article generally describing the property interest to be taken and stating the amount of damages to be paid has been approved by a duly called town meeting. The town meeting may not amend the article, except to increase the amount of damages to be paid. If the article is approved, a check in the amount of damages authorized shall be served immediately upon the owner or owners of record. In the event of multiple ownership, the check may be served on any one of the owners. Title shall pass to the town upon service of the check or upon recordation in accordance with section 3024, whichever occurs first. [1975, c. 711, § 8 (new).]

Unless specifically provided in the order of condemnation or unless the property or interests to be taken include land or right-of-way of a railroad corporation or a public utility, title to property taken for town ways after December 31, 1976, shall be in fee simple absolute. [1975, c. 770, § 98 (rpr).]

### **§3024. Recording of proceedings**

In all proceedings under this section, an award of damages by the municipal legislative body shall be considered an appropriation for that purpose. [1975, c. 711, § 8 (new).]

No taking of property or interests therein by a municipality, or the discontinuance of a town way except by abandonment, after September 12, 1959, shall be valid against owners of record or abutting landowners who have not received actual notice, unless there is recorded in the registry of deeds for the county where the land lies either a deed, or a certificate attested by the municipal clerk, describing the property and stating the final action of the municipality with respect to it. [1975, c. 711, § 8 (new).]

**§3025. Dedication and acceptance**

No property or interests therein may be dedicated for highway purposes unless the owner of such property or interest has filed with the municipal officers a petition, agreement, deed, affidavit or other writing specifically describing the property or interest and its location, and stating that the owner voluntarily offers to transfer such interests to the municipality without claim for damages, or has filed in the registry of deeds an approved subdivision plot plan which describes property to be appropriated for public use. [1975, c. 711, § 8 (new).]

A municipality may accept a dedication of property or interests therein by an affirmative vote of its legislative body. [1975, c. 711, § 8 (new).]

Unless specifically provided by the municipality, title to property accepted for highway purposes after December 31, 1976 shall be in fee simple. [1975, c. 711, § 8 (new).]

**§3026. Discontinuance of town ways**

- 1. General procedures.** A municipality may terminate in whole or in part any interests held by it for highway purposes. A municipality may discontinue a town way or public easement after the municipal officers have given best practicable notice to all abutting property owners and the municipal planning board or office and have filed an order of discontinuance with the municipal clerk that specifies the location of the way, the names of abutting property owners and the amount of damages, if any, determined by the municipal officers to be paid to each abutter.

Upon approval of the discontinuance order by the legislative body, and unless otherwise stated in the order, a public easement shall, in the case of town ways, be retained and all remaining interests of the municipality shall pass to the abutting property owners to the center of the way. For purposes of this section, the words "public easement" shall include, without limitation, an easement for public utility facilities necessary to provide service.

[1981, c. 683, § 1 (new).]

- 3. Definition of best practicable notice.** "Best practicable notice" means, at minimum, the mailing by the United States Postal Service, postage prepaid, first class, of notice to abutting property owners whose addresses appear in the assessment records of the municipality. [1981, c. 683, § 1 (new).]

**§3027. Vacation of proposed town ways in land subdivision; revocation of dedication**

- 1. Vacation of ways.** Where proposed town ways have been described in a recorded subdivision plan and lots have been sold with reference to the plan, the municipal officers, after notice to the municipal planning board or office, may, on their own initiative, on petition of the abutting property owners or on petition of any person claiming a property interest in the proposed way, vacate in whole or in part proposed ways that have not been accepted. The municipal officers shall give best practicable notice, as defined in section 3026, subsection 2, of the proposed vacation to owners of lots on the recorded subdivision plan and their mortgagees of record. The notice shall conform in substance to the following form:

## NOTICE

The municipal officers of) (A petition has been filed with the municipal officers of) (Name of Town or City) (propose to) (to vacate) the following (ways) (way) shown upon a subdivision plan (named) (dated) (and) recorded in the County Registry of Deeds, Book of Plans, Volume , Page .

(Herein list or describe ways to be vacated)

If the municipal officers enter an order vacating (these ways) (this way) any person claiming an interest in (these ways) (this way) (adverse to the claims of the petitioners) must, within one (1) year of the recording of the order, file a written claim thereof under oath in the County Registry of Deeds and must, within one hundred eighty (180) days of the filing of the claim, commence an action in the Superior Court in County in accordance with the Revised Statutes Title 23, section 3027-A.

The municipal officers shall file an order of vacation with the municipal clerk that specifies the location of the way, the names of owners of lots on the recorded subdivision plan and the amount of damages, if any, determined by the municipal officers to be paid to each lot owner or other person having an interest in the way. Damages and reasonable costs as determined by the municipal officers shall be paid by the petitioners, if any.

[1987, c. 385, § 1 (amd).]

2. **Revocation of dedication.** A dedication of property or interest therein to the municipality described in a recorded subdivision plot plan may not be revoked or vacated by the dedicator unless no lot has been sold with reference to the plan, and unless an amended subdivision plan has been approved by the municipal subdivision review authority and recorded in the appropriate registry of deeds. [1981, c. 683, § 2 (new).]

### §3027-A. Recording of vacation orders; rights of action; prior orders

1. **Recording of vacation order.** A copy of the order of vacation by the municipal officers entered under section 3027 shall be recorded in the registry of deeds where the plan of subdivision is recorded and shall contain an alphabetical listing of the names of the subdivision lot owners and their mortgagees of record whose interests may be affected by the order. The register of deeds shall make a cross-reference to the order of vacation upon or attached to the face of the subdivision plan. The register of deeds shall also index the order under the names of the lot owners whose names appear in the body of the order. Any order of vacation entered prior to the effective date of this section may be recorded by the municipal officers in the same manner and with the same effect set forth in this section. [1981, c. 683, § 3 (new).]
2. **Rights of action.** All persons are forever barred from maintaining any action at law or in equity to establish, recover, confirm or otherwise enforce any right claimed to or in a proposed or described vacated way by reason of the ownership by the claimant or by an predecessor in title of a lot or parcel of land shown on a recorded subdivision plan, unless, within one year of the date of recordation of the order of vacation, the claimant files in the

registry of deeds where the subdivision plan is recorded a statement under oath specifying the nature, basis and extent of the claimed interest in the way. The claim is forever barred unless, within 180 days after the recording of the statement, the claimant or any other person acting on behalf of the claimant commences an action in equity under Title 14, chapter 723, to establish the rights asserted to or in the way. These limitation periods are not tolled or interrupted by any disability, minority, lack of knowledge or absence from this State of any claimant. Upon the trial of an action, the court shall grant judgment for the claimant only if it finds that the claimant has acquired an interest in the proposed way and that the deprivation of rights in the proposed way unreasonably limits access from a public way, a public body of water or common land or facility to the land of the claimant shown on the recorded subdivision plan. Any judgment rendered by the court in the action may, in the discretion of the court, grant the claimant reasonable damages instead of establishment of the claimant's rights. [1981, c. 683, § 3 (new).]

- 3. Prior orders.** A person claiming an interest in a proposed unaccepted way vacated under section 3027 prior to the effective date of this section may cause an attested copy of that order to be recorded in the registry of deeds where the subdivision plan describing or showing the way is recorded. That person shall append to the order to be recorded an alphabetical listing of the names of the current subdivision lot owners and their mortgagees of record whose interest in the way may be affected by the order. The register of deeds shall also index the order under the names of the lot owners appearing in the appendix.

Within 20 days of the recording of a prior order, the person causing the order to be recorded shall give notice of his claim to all current owners of lots on the subdivision plan and their mortgagees of record by mailing by the United States Postal Service, postage prepaid, a notice informing them of his claim and advising them that, to preserve any claim adverse to his, they must file a claim and commence an action as required by subsection 2. The notice shall conform in substance to the following form:

#### NOTICE

On , 19 , the municipal officers of (Name of Town or City) entered an order vacating the following (ways) (way) shown upon a subdivision plan (named) (dated) (and) recorded in the Registry of Deeds Book of Plans, Volume , Page .

(Herein list vacated ways)

The undersigned claims to own the (ways) (way) described above. A copy of the order of the municipal officers was recorded in the Registry of Deeds on , 19 , and any person claiming an interest in (these ways) (this way) adverse to the claims of the undersigned must, within one (1) year of the date of the recording of the above order, file a written claim under oath in the Registry of Deeds and must, within one hundred eighty (180) days thereafter, commence an action in the Superior Court in County in accordance with the Revised Statutes, Title 23, section 3027-A.

**§3028. Abandonment of public ways**

1. **Presumption of abandonment.** It is prima facie evidence that a town or county way not kept passable for the use of motor vehicles at the expense of the municipality or county for a period of 30 or more consecutive years has been discontinued by abandonment. A presumption of abandonment may be rebutted by evidence that manifests a clear intent by the municipality or county and the public to consider or use the way as if it were a public way. A proceeding to discontinue a town or county way may not prevent or estop a municipality from asserting a presumption of abandonment. A municipality or its officials are not liable for nonperformance of a legal duty with respect to such ways if there has been a good faith reliance on a presumption of abandonment. Any person affected by a presumption of abandonment, including the State or a municipality, may seek declaratory relief to finally resolve the status of such ways. A way that has been abandoned under this section is relegated to the same status as it would have had after a discontinuance pursuant to section 3026, except that this status is at all times subject to an affirmative vote of the legislative body of the municipality within which the way lies making that way an easement for recreational use. A presumption of abandonment is not rebutted by evidence that shows isolated acts of maintenance, unless other evidence exists that shows a clear intent by the municipality or county to consider or use the way as if it were a public way. [1991, c. 195 (new).]
2. **Status of town way or public easement.** The determination of the municipal officers regarding the status of a town way or public easement is binding on all persons until a final determination of that status has been made by a court, unless otherwise ordered by a court during the pendency of litigation to determine the status. [1991, c. 195 (new).]
3. **Removal of obstructions.** If the municipal officers have determined under subsection 2 that the way is a town way or public easement and a court has not ordered otherwise, the municipality or an abutter on the way, acting with the written permission of the municipal officers, may remove any gates, bars or other obstructions in the way. [1991, c. 195 (new).]

**§3029. Damages; appeal**

Damages shall be determined using the methods in sections 154 through 154E, as far as practicable, except that references to the "commission" or the "board" shall mean the "municipal officers" and references to the "state" shall mean the "municipality." [1977, c. 479, § 5 (amd).]

Any person aggrieved by the determination of the damages awarded to owners of property or interests therein under this chapter may, within 60 days after the day of taking, appeal to the Superior Court in the county where the property lies. The court shall determine damages by a verdict of its jury or, if all parties agree, by the court without a jury or by a referee or referees and shall render judgment for just compensation, with interest where such is due, and for costs in favor of the party entitled thereto. [1975, c. 711, § 8 (new).]

Any person aggrieved by the action or nonaction of municipal officers or the municipal legislative body in proceedings under this chapter, other than a determination of damages, may appeal to the

Superior Court in the county where the property lies, pursuant to Rule 80B of the Rules of Civil Procedure. [1975, c. 711, § 8 (new).]

### **§3030. Purchase; prescription**

Nothing in this chapter shall be construed to abridge the authority of a municipality to acquire property or interests therein for highway purposes by purchase, or to modify the law relating to acquisition of property by a municipality through prescriptive use

### **§3031. Public and private rights in proposed, unaccepted ways in subdivisions**

1. **Public rights.** From the date of recording of a subdivision plan in the registry of deeds, the public acquires rights of incipient dedication to public use of the ways laid out on the plan. If a proposed way laid out in the plan is not accepted by the municipality within 20 years from the date of recording of the plan, the public rights in that way terminate. [1987, c. 385, § 2 (new).]
2. **Private rights.** A person acquiring title to land shown on a subdivision plan recorded in the registry of deeds acquires a private right-of-way over the ways laid out in the plan. If a proposed, unaccepted way is not constructed within 20 years from the date of recording of the plan, and if the private rights created by the recording of the plan are not constructed and utilized as private rights within that 20-year period, the private rights-of-way in that way terminate.

Unless title has been reserved pursuant to Title 33, section 469-A, when the private rights established by this subsection are terminated as provided in this subsection or by order of vacation by the municipality, the title of the fee interest in the proposed, unaccepted way for which the private rights-of-way have terminated passes to the abutting property owners to the centerline of the way.

3. **Shorter duration of public and private rights; rights of lesser extent.** Notwithstanding subsections 1 and 2, the developer or other person recording a subdivision plan in the registry of deeds may set a shorter duration for the public and private rights established in subsections 1 and 2 than the period provided in those subsections. The developer or other person recording the subdivision plan shall cause the shorter duration to be noted on the face of the subdivision plan.

Pursuant to a subdivision review under Title 30-A, chapter 187, subchapter IV, the municipal reviewing authority may set a shorter duration for the public and private rights established in subsections 1 and 2 than the period provided in those subsections. The municipal reviewing authority shall cause the shorter duration to be noted on the face of the subdivision plan.

Nothing in this section may be construed to prohibit the developer or other person recording a subdivision plan in the registry of deeds from granting rights of lesser extent than those established in subsections 1 and 2. If rights of lesser extent are granted, the person recording the subdivision plan shall cause the extent of those rights to be described on the

face of the subdivision plan and in any conveyance of land shown on the plan. [1995, c. 462, Pt. B, §4 (amd).]

4. **Fee interest reserved by owner of subdivision.** If the owner of land for which a subdivision is proposed reserves the fee interest in any ways proposed on the subdivision plan, the owner shall place a statement of this reservation in all conveyances by him of land in the subdivision. [1987, c. 385, § 2 (new).]

### §3032. Proposed, unaccepted ways deemed vacated

1. **Deemed vacation.** [1997, c. 386, §1 (rp).]

**1-A. Deemed vacation.** A proposed, unaccepted way or portion of a proposed, unaccepted way laid out on a subdivision plan recorded in the registry of deeds prior to September 29, 1987 is deemed to have been subject to an order of vacation under section 3027 if, by the later of 15 years after the date of the recording of the subdivision plan laying out the way or portion of the way or September 29, 1997, both of the following conditions have been met:

- A. The way or portion of the way has not been constructed or used as a way; and [1997, c. 386, §2 (new).]
- B. The way or portion of the way has not been accepted as a town, county or state way or highway or as a public, utility or recreational easement. [1997, c. 386, §2 (new).]

A way or portion of a way considered vacated under this subsection is subject to section 3033.

[1997, c. 386, §2 (new).]

2. **Extensions.** The municipal officers of the affected municipality may except a proposed, unaccepted way or portion of a proposed, unaccepted way described in subsection 1-A from the operation of the time limitations of that subsection by filing, in the registry of deeds where the subdivision plan is recorded, a notice stating that the way or portion of the way is excepted from the operation of subsection 1-A for a period of 20 years from the filing of the notice. To be effective, this exception must be filed prior to the expiration of the time limitations of subsection 1-A. An extension accomplished under this subsection may be extended by the municipal officers for a subsequent 20-year period by the filing of a new notice within the preceding 20-year extension period. [1997, c. 683, Pt. B, §10 (amd); §11 (aff).]

### §3033. Rights of action concerning ways deemed vacated

1. **Notice by person claiming ownership.** Any person claiming to own a proposed, unaccepted way or portion of a proposed, unaccepted way deemed vacated under section

3032 may record, in the registry of deeds where the subdivision plan, to which the notice set forth in this subsection pertains, is recorded, a conformed copy of the notice set forth in this subsection, with an alphabetical listing of the names of the current record owners of lots on the subdivision plan to which the notice pertains and their mortgagees of record. The person shall give notice of his claim to these current record owners and their mortgagees of record. Within 20 days of recording of the notice, the person shall give this notice by mailing, by the United States postal service, postage prepaid, to the current record owners and mortgagees, a copy of the notice set forth below:

#### NOTICE

By virtue of the Maine Revised Statutes, Title 23, section 3032, the following proposed, unaccepted ways or portions of proposed, unaccepted ways were deemed by law to have been vacated by the municipal officers of (name of town or city) . The ways or portions of ways so vacated are shown on a plan (named) (dated) (and) recorded in the County Registry of Deeds, Book of Plans, Volume , Page , (Folio #) and are described as follows:

(Herein list vacated ways or portions of ways)

The undersigned claims to own the (way or ways) (portion of way or ways) described above. Any person claiming an interest in (this way or these ways) (a portion of this way or these ways) adverse to the claim of the undersigned, within one year from the date of recording of a copy of this notice in the registry of deeds, must file a written claim, under oath, in the same registry and, within 180 days thereafter, must commence an action in Superior Court in County in accordance with the Maine Revised Statutes, Title 23, section 3033. A copy of this notice was recorded in the registry of deeds on , 19 .

[1987, c. 385, § 2 (new).]

2. **Rights of action by persons receiving notice.** All persons receiving a notice under subsection 1, who claim any private right of any kind in the way or portion of a way to which the notice pertains, are forever barred from maintaining any action at law or in equity to establish, recover, confirm or otherwise enforce any right claimed to or in the way or portion of a way by reason of the ownership by the person, or by a predecessor in title, of a lot or parcel of land shown on the recorded subdivision plan to which the notice pertains, unless, within one year from the date of recording of the notice, the person files in the registry of deed where the pertinent subdivision plan is recorded a statement, under oath, specifying the nature, basis and extent of the claimed interest in the way or portion of a way. The claim is forever barred unless, within 180 days of the recording of the statement, the claimant, or a person acting on his behalf, commences an action in equity under Title 14, chapter 723, to establish the rights asserted to or in the way or portion of a way.

The limitation periods in this section are not tolled or interrupted by any disability, minority, lack of knowledge or absence from this State by the claimant.

[1987, c. 385, § 2 (new).]

3. **Trial of an action.** Upon trial of an action initiated under subsection 2, the court shall grant judgment for the claimant only if it finds that:
- A. The claimant has acquired an interest in the way or portion of a way; and [1987, c. 385, § 2 (new).]
  - B. The deprivation of the claimant's rights in the way or portion of the way unreasonably limits the claimant's access from his land shown on the recorded subdivision plan to:
    - (1) A public way;
    - (2) A public body of water; or
    - (3) Common land or a common facility within the subdivision.
- [1987, c. 385, § 2 (new).]

Any judgment rendered by the court in an action under subsection 2, in the discretion of the court, may grant the claimant reasonable damages instead of establishment of the claimant's rights, except that under no circumstances shall a municipality be liable for any damages granted by any judgment rendered by the court under subsection 2.

#### §3034. Structures located in proposed ways

1. **Action to compel removal.** When any structure, for 20 years, has been continuously located, in whole or in part, within a proposed, unaccepted way laid out in a subdivision plan recorded in the registry of deeds, and lots have been sold with reference to this plan, no action may be maintained by any person to compel removal of the structure based upon the fact of its location within the proposed, unaccepted way. For the purposes of this section, person includes a corporation, partnership, governmental entity or other entity.

Nothing in this section may be construed to restrict or affect private rights in a proposed, unaccepted way which come into existence under common law, in equity or under existing statutes. This section shall not be construed for any reason to extend the 20-year period set forth in this subsection.

[1987, c. 385, § 2 (new).]

2. **Applicability.** This section applies to structures existing and proposed, unaccepted ways laid out on subdivision plans recorded in registries of deeds before, on or after the effective date of this section, except that:
- A. When a structure is located within a proposed, unaccepted way laid out on a subdivision plan recorded in the registry of deeds 20 years or more before the effective date of this section, any person, other than the owner of the structure, who claims a right or interest of any kind in the land within the proposed, unaccepted way, or any person claiming by, through or under such a person, may preserve his right or interest by recording the notice set forth in subsection 3, within 2 years after

the effective date of this section, in the registry of deeds where the pertinent subdivision plan is recorded; and [1987, c. 385, § 2 (new).]

B. When a structure is located within a proposed, unaccepted way laid out on a subdivision plan recorded in the registry of deeds less than 20 years before the effective date of this section, any person, other than the owner of the structure, who claims a right or interest of any kind in the land within the proposed, unaccepted way, or any person claiming by, through or under such a person, may preserve his right or interest by recording the notice set forth in subsection 3, in the registry of deeds where the pertinent subdivision plan is recorded, within the later of:

- (1) Twenty years from the date of the recording of the subdivision plan, on which the way is laid out, in the registry of deeds; or
- (2) Two years after the effective date of this section.

[1987, c. 385, § 2 (new).]

A person seeking to preserve a right or interest under paragraph A or B, within one year after the recording of the notice, shall bring an action to quiet title to establish the existence and extent of his claimed right or interest.

[1987, c. 385, § 2 (new).]

**3. Notice.** The notice required under subsection 2, paragraphs A and B, shall contain:

- A. An intelligible description of the land in which the right or interest is claimed; [1987, c. 385, § 2 (new).]
- B. The name and address of the person on whose behalf the right or interest is claimed; [1987, c. 385, § 2 (new).]
- C. A description of the structure claimed to be within the proposed, unaccepted way in which the person claims a right or interest; [1987, c. 385, § 2 (new).]
- D. The name and address of the owner of the structure; [1987, c. 385, § 2 (new).]
- E. A description, including specific reference, by date of recording and the volume and page numbers, of the recorded instrument upon which the person claims the right to or interest in the recorded source of title; and [1987, c. 385, § 2 (new).]
- F. A duly verified oath taken by the person claiming the right or interest before a person authorized to administer oaths. [1987, c. 385, § 2 (new).]

[1987, c. 385, § 2 (new).]

4. **Register's duties.** In indexing a notice presented for recording under subsection 2, the register of deeds shall make an entry:

A. In the grantee index of deeds under the name of the person making the claim in the notice; and [1987, c. 385, § 2 (new).]

B. In the grantor index of deeds under the name of the owner of the structure described in the notice. [1987, c. 385, § 2 (new).]

The register of deeds may charge the same fee for recording the notice that is charged for recording deeds.

[1987, c. 385, § 2 (new).]

5. **Who may present notice for recording.** The notice required under subsection 2 may be presented for recording by the person claiming the right or interest or a person acting on his behalf. Disability or lack of knowledge by the person claiming the right or interest shall not extend the time limitations related to the recording of the notice. [1987, c. 385, §2 (new).]

6. **Mailing the notice.** Within 20 days of the recording of the notice required under subsection 2, the person who presented the notice for recording shall deliver or mail, to the owner's last-known address, a copy of the notice to the owner of the structure described in the notice. [1987, c. 385, § 2 (new).]

### §3035. Construction of laws

Nothing in sections 3031 to 3034 may be construed to extend the period for the bringing of an action or for the doing of any other required act under any statute of limitations. Nothing in those sections may be construed to affect the nature of any right or interest which may be claimed in property to which those sections apply, or to affect the law regarding the sale, release or other disposition of such a right or interest. [1987, c. 385, § 2 (new).]

Sections 3031 to 3034 shall be liberally construed to affect the legislative purpose of enhancing the merits of title to land by eliminating the possibility of ancient claims to proposed, unaccepted, unconstructed ways that are outstanding on the record but unclaimed. [1987, c. 385, §2 (new).]